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**Environmental Assessment
For
Harney County, Whitehorse Road Realignment
Right-of-way OR-57341**

EA Number: OR-030-03-015

Title: Harney County Road Realignment

Case File Serial Number: OR-57341

BLM Office: Jordan Field Office, Vale District

Proposed Action: Road Right-of-way

Preparation Date: 3/3/2003

Proposed Action and Purpose and Need

1.1 Proposed Action

The proposed action is the grant of a road right-of-way (ROW) across Bureau of Land Management (BLM) managed public lands to Harney County Road Department to allow for a new County Road replacing a section of the existing Whitehorse County Road.

The BLM managed public lands are located in Township (T.) 38S., Range (R.) 38E., Section 19; N2, T.38S., R.37E., Section 24; S2, T.38S, R. 37E., Section 25; NWNW, NWSW, T.38S., R.37E., Section 26; SESESE, T. 38S., R.37E., Section 35; E2NE, SENWNESE, E2SWSE, T.39S., R.37E., Section 2; NWNE of the Willamette Meridian, Oregon (see map exhibit B).

1.2 Purpose and Need

1.2.1 Need

The need for the proposed action is to provide public transportation for school buses, farm related traffic, government access as well as tourist related traffic and will be an all weather facility to be used 12 months of the year. The BLM has a need to comply with the BLM's policy to manage right-of-way use of the public lands through a system of designated ROW corridors. The Vale District, Jordan Field Office, has a need to comply with the Southern Malheur Management Framework Plan (MFP) (Lands LD-9) (a-6), and the Proposed Southeastern Oregon Resource Management Plan and Final Environmental Impact Statement SEORMP/EIS) of April 2001, Road Design and Maintenance (Appendix O Best Management Practices - pg. 339).

1.2.2 Purpose

The purpose is to provide to the public a safe transportation route that can be used year round. The origination and destination of the road will remain unchanged from what it is now, which is to connect the Whitehorse Ranch others to the Fields-Denio Road and

provide access to the necessities of life. To comply with the Vale District SEORMP, the proposed action will incorporate the following objectives:

- Reduce disturbance to soils and vegetation on BLM managed land and limit the potential for the invasion of noxious weeds.
- Maintain or increase public safety on BLM managed public lands.
- Use existing ROW corridors where possible.
- Limit impacts to and conflicts with existing permitted uses of the BLM managed public land.

1.2.3 Issues

1.2.3.1. Public Safety

Dust from Construction activities could pose an added safety hazard to motorists traveling the Whitehorse Road during the life of the project.

1.2.3.2 Recreation

Dust from the project could pose a hazard to recreational visitors to the area.

1.2.3.3 Visual Resources

The proposed project would be visible to vehicles traveling the Whitehorse Road.

1.2.4 Background

Harney County Road Department's Proposal:

Harney County is requesting a 60foot right-of-way approximately 3.75 miles long. The road will be constructed to a minimum standard of 24 feet finished surface. The proposed project will be constructed to the current county road standards for a rural Harney County road. The minimum standard "as stated" is a 24 foot finished surface with a minimum 3% crown, maximum 6% grade, 3:1 road and fill slopes where possible and minimum 1 1/2:1 cut slopes. Low water crossings, bridges, or other major structures will not be necessary for this project. Culverts will be placed in wet weather drainages as necessary and as determined by the Harney County Road Supervisor.

The existing roadway has not been developed, so it is actually a ditch rather than an elevated drained road. This causes a number of problems, with safety being the primary concern. During the winter and spring months, storms cause the existing road to become a stream rather than a road, causing further safety concerns especially for the school bus and children traveling back and forth to school. The existing road is also very crooked, with many

unnecessary curves, which along with the sunken grade will cost substantially more money to reconstruct than a new facility.

Currently, the existing road runs by the northwest side of Twin Springs and Warm Springs. Warm Springs originates in the center of the existing roadway. The spring and the surrounding area are identified as significant cultural resources. By moving the road further west, the County will avoid this sensitive area completely.

1.2.5 Conformance and Consistency

1.2.5.1 Rights-of-way (BLM Manual 2800.06(B))

BLM Manual 2800.06 (B) states that it is the policy of the BLM to: “Manage right-of-way use on the public land through a system of designated right-of-way corridors. The use of right-of-way corridors will be actively encouraged by the Bureau managers whenever practical and feasible.” And, (F) “Provide all right-of-way applications and grants a timely and equitable consideration and the highest degree of public service.”

1.2.5.2 Rights-of-way (43 CFR 2800.0-2 (d))

“Coordinate, to the fullest extent possible, all action taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.”

2.0 Description of the Alternatives

2.1 Alternative A: No Action

Under the No Action Alternative a new right-of-way grant would not be granted.

2.2 Alternative B: Proposed Action

The proposed action is the granting of a road right-of-way across BLM managed public lands to Harney County Road Department to allow for a new County Road, replacing a section of existing Whitehorse County Road. Harney County is requesting a 60 feet right-of-way approximately 3.75 miles long. The road will be constructed to a minimum standard of 24 feet finished surface.

This alternative would comply with BLM’s policy to manage ROW use of the public land through a system of designated ROW corridors. This alternative would also comply with the objectives stated in 1.2.2 of this document in that it would: reduce disturbance to soils and vegetation on BLM managed land and limit the potential for the invasion of noxious weeds, maintain or increase public safety on BLM managed public lands, and use existing ROW corridors where possible.

3.0 Affected Environment

3.1 Location and Topography

The area analyzed in this document begins west of and north of the existing road, beginning at the cattle guard in section 2 of T.39S., R.37E., and extending northeast to beyond Twin Springs to the NE ¼ of section 19 of T.38S., R.38E. The remaining section of road surveyed continues northeast towards Whitehorse Ranch.

The topography is located in the Basin and Range province, and is relatively flat. A large part of the road is directly southeast and south of Red Mountain, a prominent natural local landmark. The Trout Creek Mountains lie about 12 miles south, and the Alvord Desert is about 18 miles northwest. The Steens Mountains are visible to the northwest. The Whitehorse Ranch buildings, prominent local cultural landmarks, are three miles north northeast of the northeast end of the road realignment, just to the north of the Whitehorse Road. Highway 95 is 24 miles east, and the town of McDermitt, Nevada, is 34 miles south of the Whitehorse-Highway 95 junction.

3.2 Vegetation

Vegetation consists of sagebrush (dominant), rabbitbrush, greasewood, shadscale, cheatgrass, bluebunch wheatgrass, occasional basin wildrye, and other unidentified forbs and grasses. Halogeton, pepperweed and tumble mustard are found in disturbed areas along roads.

3.3 Special Status Plants

The project area is located in the Basin and Range province, and features big sagebrush (*Artemisia tridentata*) and salt desert shrub communities. Suspected plants of concern in the area include *Astragalus alvordensis* (Watch List), *Astragalus solitarius* (Federal C2) Field species of concern, *Caulanthus pilosus* (Watch List), *Chaenactis macrantha* (ONHP List 2), *C. stevioides* (ONHP List 2), *Malacothrix glabrata* (Watch List), *M. torreyi* (Watch List), and *Thelypodium howellii* ssp. *howellii* (ONHP List2).

Field work was conducted June 6, 1995. The new right-of-way route was walked, with extra attention given as different substrates and habitats were encountered. The existing road was driven and spot checked, with some sections walked, including along Willow Creek. An attempt was made to sample all habitats observed, with the less disturbed sampled more completely (walked). A list of plants identified along the new proposed right-of-way was kept, and notes taken on plants found along the current road.

The proposed and existing routes are on gently rolling lowlands through sagebrush and desert scrub plant communities. Portions of the area appear to have burned in recent years and are heavily infested with cheatgrass

(*Bromus tectorum*). The road crosses Willow Creek and its associated wet meadows. The new route is designed to avoid Twin Springs and Warm Springs which the current road is adjacent to.

The following sensitive plants were located: *Astragalus solitarius*, *Caulanthus pilosus*, *Malacothrix glabrata* and *M. torreyi*. *Astragalus solitarius* was located in three areas along the proposed right-of-way, and an additional site was located along the road just north of the junction with the Willow Creek road on the east side of the road (T37S, R36E, sec. 22 NW of SW1/4). *Caulanthus pilosus* and *Malacothrix glabrata* were located in the same area (Willow Creek road). *Malacothrix torreyi* was found along the proposed route north of Twin Springs.

Astragalus solitarius has been found at several locations in the near vicinity, including several large and extensive populations. Populations found are not significant, and the project would not have an impact on the continued existence of the species. This species has been found to be more numerous and widespread than was previously thought, and has been recommended for deletion from the federal candidate list and all state lists.

The other three species of interest which were encountered are all on the Oregon Natural Heritage Program's Watch List. These are species which are not in immediate jeopardy, but are found infrequently or are relatively common but are thought to be losing habitat or are declining in numbers. These species are tracked but not necessarily actively managed for, and the project would not significantly impact any of the three species.

No significant adverse effects to any threatened, endangered or sensitive plants are anticipated as a result of this road realignment project.

3.4 Noxious Weeds

Perennial pepperweed (*Lepidium latifolium*), a Malheur County Class A-listed noxious weed in southern Malheur County and Oregon Department of Agriculture Class B weed, has been found near the Whitehorse Ranch, as has Russian knapweed, (*Acroptilon repens*), a County and ODA Class B-listed noxious weed. In disturbed areas along the road, halogeton (*Halogeton glomeratus*), a county Class C and ODA Class B weed, is abundant. Many other annual weedy species, including tumble mustard (*Sisymbrium altissimum*), clasping pepperweed (*Lepidium perfoliatum*) and cheatgrass are abundant along the road right-of-way.

The project area is periodically monitored for existence of noxious weeds and where infestations are found and treatment is warranted, control activities are initiated by BLM. These monitoring and treatment activities would continue on BLM managed public lands regardless of the development of a right-of-way.

3.5 **Recreation**

There is recreational traffic throughout the project area by motorized vehicles. Visitors to the area often stop at the Willow Creek Hot Springs, located approximately two miles southeast of the project area. There would be little inconvenience to anyone traveling the Whitehorse road during construction activities. Once the realignment project has been completed, vehicles traveling the road will enjoy a safer route.

3.6 **Visual Resources**

The project area is not in a high or sensitive visual area. The most important land use is transportation. Surrounding public domain is used for grazing. VRM class III as stated in the RMP “moderate levels of change are acceptable..” p. 308, App. J.

3.7 **Public Safety**

There is a safety concern for the existing road which is neither crowned nor ditched, and has been flat-bladed so often that is now a sunken road. Much of its surface holds snow in the winter and it retains mud puddles after rains. Local ranchers and some tourists use this road, the most convenient route between Fields and Highway 95. In addition, the school bus from the Whitehorse Ranch to Fields uses it daily, as does United Parcel Service.

3.8 **Livestock Grazing**

This proposal is located within the Whitehorse Butte (01206) Allotment and should have no effect on livestock grazing in the allotment.

3.9 **Wildlife Special Status**

Terrestrial Wildlife

Federal listed species

There are no federal Threatened or Endangered species of terrestrial wildlife in the proposed road realignment area. Consequently there would be no need to consult with the U.S. Fish and Wildlife Service regarding Section 7 of The Endangered Species Act (ESA).

Species Likely Present

No systematic surveys for wildlife presence and abundance have been conducted for this assessment. Based on existing records, general observations made during the course of recent field work, and habitat relationships data for eastern Oregon (Maser et al. 1984) the following species of wildlife are likely to occupy habitats within the road realignment area:

Landbirds: # greater-sage grouse, loggerhead shrike, brewers sparrow, vesper sparrow, horned lark, western meadowlark, sage thrasher

Mammals : ## northern kit fox, coyote, badger, mule deer, pronghorn, * pygmy rabbit, black-tailed jackrabbit, desert cottontail, antelope ground-squirrel, deer mouse, Great Basin pocket-mouse, kangaroo rat

Reptiles: short-horned lizard, sagebrush lizard, western whiptail

BLM Sensitive - currently being petitioned for federal listing under ESA range-wide

Oregon State Threatened

* Potentially present; no verified sightings or systematic surveys conducted in recent years

Habitat Conditions

Wildlife habitats affected by the proposed action are comprised of dry (<8" precipitation) low elevation salt desert / sagebrush steppe (Wyoming sagebrush and basin big sagebrush) plant community complexes. According to Interior Columbia Basin Ecosystem Management Project (ICBEMP) science documents, these lower elevation sagebrush types have declined substantially in extent over the last century (more than 30% compared to historic records) due to agricultural development, urbanization, wildfires, and other disturbance factors. The result of these losses has been a decline in numerous wildlife species and communities dependent on sagebrush steppe.

Sagebrush habitats present within the road realignment area support shrubland communities capable of supporting species of wildlife likely to occupy the project area. Existing plant communities are in early to mid seral ecological condition so they are not considered to be of a high quality. At least some of the forage, cover, and structure needs of wildlife are present. Existing plant communities do not show evidence of recent wildfires or cultural treatments (seedings or brush controls). There are no unusual or unique wildlife habitat features associated with the project area.

A series of springs and wet meadows are present within a few hundred feet south of the existing road corridor. These habitats are attractive to game and non-game species alike throughout the year for activities including foraging and nesting.

Special Status Species Accounts

Kit fox (Vulpes macrotis) - Salt desert plant communities and sand dunes associated with the Whitehorse desert in general are preferred habitat for kit fox. Kit fox are rare in Oregon, hence their listing as Threatened by the Oregon Department of Fish and Wildlife, but relatively common in other adjoining western states including Nevada. Kit fox distribution is limited by the presence and abundance of salt desert communities. Oregon Department of Fish and Wildlife funded surveys have documented kit fox presence in the Whitehorse desert in general but not specifically within the proposed action area (Jordan Resource Area records).

Pygmy rabbit (Brachylagus idahoensis) - Pygmy rabbits are primarily dependent upon Wyoming or basin big sagebrush communities with dense canopy cover (typically 23% or more) in deep, relatively friable soils the species can burrow within. Some populations

are reportedly in decline within the Interior Columbia Basin due to loss of sagebrush habitats from fires and agricultural development. Historic observations of pygmy rabbits have been made in and around the Whitehorse ranch in general (e.g. the Willow Creek drainage) though not specifically within the realignment area. Based on the sagebrush canopy types present within the realignment area, a majority of the habitat present that would be effected is not suitable or preferred by pygmy rabbits.

Greater sage-grouse (Centrocercus urophasianus ; eastern subspecies) - Due to the presence of springs/meadows and sagebrush steppe, sage grouse probably use habitats near the road realignment area in the fall and winter. It is likely that sage grouse pass through the project area in their annual movements between winter range near the Whitehorse Ranch and breeding/brood rearing ranges. Breeding and brood rearing habitats of generally high quality are located at much higher elevations to the north and south of the proposed action area including the Sheepheads and Oregon Canyon/Trout Creek Mountains. There are no sage grouse leks located within the proposed action area. The nearest lek is more than 12 miles south of the proposed action area.

3.10 Cultural Resources

Archaeological test excavations were carried out at eight different sites within the path of the Whitehorse Road realignment, in August and September of 2002. The research concludes that the prehistoric cultural materials deposited in the project area occur as a thin mantle generally within five to ten cm of the surface and are underlain by archaeologically sterile deposits probably of Pleistocene origin. No dateable organic materials or faunal remains were discovered. Analytical studies were limited to obsidian geochemical characterization, and obsidian hydration analysis.

Testing at the eight sites produced small to moderate amounts of lithic debitage, primarily within the upper 15 cm of deposits at each location. No dateable organic materials were recovered from any of the site, nor were faunal remains. Formed tools included biface fragments and Rosegate, Elko, and Large Side notched point fragments. There are numerous archaeological sites at a variety of elevations throughout the Whitehorse Basin that are quite similar; small lithic scatters and locations where cobble testing has occurred that are at or very near the surface due to limited depositional episodes and/or deflation.

The sites within the project area are lacking in tool diversity, organic remains suitable for radiocarbon dating, or faunal remains. The sediments are surprisingly uniform and it has been suggested that the sediment accumulation has probably been quite limited in the area since the early Holocene. Several sites in the vicinity and consisting primarily of mid to late Holocene lithic reduction localities and possible hunting camps. However, these sites also tend to lack depth and most are well outside of the project area.

In the larger regional context, the impact of the Whitehorse Road realignment on the eight sites within the right-of-way will be offset by the presence of numerous undisturbed sites of a similar nature throughout the Whitehorse Basin, and from the information obtained from these sites via obsidian sourcing and hydration.

There would be no adverse effects resulting from the implementation of the proposed action on cultural resources if the Standard Stipulations (attached) are adhered to.

4.0 Environmental Consequences

4.1 Wildlife

4.1.1 No Action: Alternative A:

Direct habitat losses and wildlife mortalities associated with road construction described under the proposed action would be avoided. Wildlife mortalities due to vehicle/animal collisions would remain unchanged. Benefits of increased wildlife security for foraging and nesting activities in spring/meadow complexes near the existing travel corridor would be foregone.

4.1.2 Proposed Action: Alternative B

Plant cover losses resulting from the proposed action would eliminate about 40 to 50 acres of habitat capable of supporting most species described under the existing environment. In view of the fact that very little loss of shrub cover has occurred over the last several decades in the Whitehorse desert, the amount of adverse impact resulting from the proposed action (<1% additional loss) would not be considered significant.

The timing of road construction would avoid direct mortalities and disruption of landbird nesting activity in 2003. Because there are no sage grouse leks within or near the project area, no breeding season impacts to the species would be expected. Although kit fox and pygmy rabbits probably travel through the project area on occasion, it is unlikely that the proposed action would result in any significant direct losses of habitat important to their life histories for reasons described in the existing environment.

Road realignment would result in an overall reduction in the amount of disturbance (unavoidable noise and activity associated with vehicular travel) to wildlife occupying springs and meadows adjacent to the existing travel corridor.

Due to the increased number of road miles associated with the proposed action, a slight increase in the potential for animal mortalities due to animal/vehicle

collisions (especially kit fox and pygmy rabbits) may occur over the long term. The amount of additional mortality that might occur is unknown. However, given the relatively limited amount of traffic passing through the area and the speeds vehicles can attain, the number of additional mortalities would not be expected to significantly threaten existing wildlife populations.

Most small mammals and reptiles, resident within the new road corridor, would sustain unavoidable direct mortalities and habitat losses as a consequence of land moving equipment and surface disturbance associated with new road construction.

Literature Citations

Chris Maser et al. 1984. General Technical Report PNW-172, Part 2 of 2; Wildlife Habitats in Managed Rangelands – The Great Basin of Southeastern Oregon, The Relationship of Terrestrial Vertebrates to Plant Communities and Structural Conditions. 237 p

4.1.3 Cumulative Impacts

Some small mammal and reptile would sustain unavoidable direct mortalities and habitat losses due to land moving equipment and surface disturbance associated with the new road construction.

4.2 Special Status Plants

4.2.1 Alternative A: No Action

Direct and Indirect: The right-of-way would not be granted. Vehicle travel would continue through the presently unsafe road route. No effect on special status plants.

4.2.2 Alternative B: Proposed Action

Direct and Indirect: The right-of-way would be granted and a safer road route would be established. Dust from construction activities could pose a hazard to motorists. No effect on special status plants.

4.2.3 Cumulative

The realigned road route would improve the infrastructure on BLM managed public lands. There is no expected impact on any Special Status Plants because of the low likelihood of the occurrence of Special Status Plants (Botanical Survey dated June 6, 1995, available at the Vale District Office).

4.3 Cultural

4.3.1 Alternative A: No Action

Direct and Indirect: The right-of-way would not be granted. Vehicle travel would continue through the area. Existing sites would not be disturbed.

4.3.2 Alternative B: Proposed Action

Direct and Indirect: The right-of-way would be granted. Vehicle travel would continue through the area on a safer/improved road route. Sites

within the project area will be disturbed. However, they will be offset by the presence of numerous undisturbed sites of a similar nature throughout the Whitehorse Basin, and from the information obtained from these sites.

4.3.3 **Cumulative**

There would be no adverse effects resulting from the implementation of the proposed action on cultural resources if the Standard Stipulations (attached) are adhered to.

5.0 **No Impacts**

The following critical elements were considered, but will not be addressed because they would either not be affected or do not exist in the project area:

1. Agricultural Land, Prime or Unique
2. Flood Plains
3. Riparian/Wetlands
4. Wild and Scenic Rivers
5. Wilderness
6. Environmental Justice
7. Air Quality

6.0 **Persons/Agencies Consulted**

<u>Name</u>	<u>Position</u>
Jon Sadowski	Wildlife Biologist
Jack Wenderoth	Hydrologist
Cynthia Tait	Fisheries Biologist
Cameron Rasor	Range Management Specialist
Natalie Sudman	Archaeologist
Diane Pritchard	Archaeologist
Patrick O'Grady	Archaeologist
Fred Nials	Geomorphic Studies
Lynne Silva	Weeds Specialist
Jean Findley	Botanist
Tom Christensen	Outdoor Recreation Planner
Vern Pritchard	Supervisory Civil Engineer
Susie Manezes	Realty Specialist/Team Leader

7.0 **RECOMMENDATION**

It is recommended that Right-of-way OR-57341, be issued to Harney County to authorize the construction, operation, maintenance and termination of portions of the Whitehorse Road on public lands as described in the Proposed Action section above. This right-of-way would be granted pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) and would be subject to the Act, applicable regulations contained in 43 CFR 2800 and the special stipulations attached to and made part of the grant. It is further recommended that this right-of-way be issued for 20 years, subject to renewal, and subject to valid existing rights.

The proposed action is in conformance with State and local land use plans as well as Proposed Southeastern Oregon Resource Management Plan of 2001.

Issuance of this right-of-way will not conflict with any foreseeable development plans on the subject lands if recommended stipulations are adhered to.

The United States owes the surface and mineral estates of the subject lands.

The subject lands have no known unique values, and there are no pending land use applications other than this.

The issuance of the grant would be consistent with Title V of FLPMA and with the regulations found at 43 CFR 2800.

Preparer: Susie K. Manazes

Date: 03/03/2003

FINDING OF NO SIGNIFICANT IMPACT

I have reviewed Environmental Assessment OR-57341, including the explanation and resolution of any potentially significant environmental impacts. The subject lands have been examined by resource area specialists in accordance with the National Environmental Policy Act of 1969 (NEPA) and other statutes relevant to the proposal.

To the extent possible, management practices and design features that avoid or minimize environmental harm have been included in Alternative B. Some of the management practices include surface disturbing activities that will protect the natural resources, and prevent unnecessary or undue environmental damage to the lands. The realignment will improve the safety of vehicles traveling the roadway, and improve/restore the natural springs that are located in the existing road. There are no significant adverse effects associated with any threatened, endangered or sensitive plants or wildlife as a result of this project. There would be no adverse effects resulting from the implementation of the proposed action on cultural resources if the Standard Stipulations are adhered to.

Through the documentation in the Environmental Assessment, I have determined that the proposed action will not have any significant impacts on the human environment and that an EIS is not required. I have determined that the proposed project is in conformance with the approved land use plan.

Authorized Officer: /S/ Jerry L. Taylor Date: 5/7/2003
Jordan Field Office Manager

EXHIBIT A
April 18, 2003

Special Stipulations
OR-57341

1. The holder shall conduct all activities associated with the construction, maintenance, operation, and termination of the right-of-way within authorized limits of the right-of-way.
2. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

Pursuant to 43 CFR 10.4 (g), the holder of this authorization shall notify the authorized officer of the BLM by telephone, with written confirmation, immediately upon discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4 (c) and (d), the holder shall stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.

3. Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pests(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
4. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
5. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substances or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. 9601, et seq.) or the Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6901 et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's

activity on the right-of-way. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

6. The holder shall remove only the minimum amount of vegetation necessary for the construction of the road/facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate re-growth of vegetation.
7. During surface disturbing construction and maintenance activities, the hold shall ensure that all construction equipment and vehicles are cleaned of all vegetation (stems, leaves, seeds, and all other vegetative parts) **prior to entering public lands** in order to minimize the transport and spread of noxious weeds. During surface disturbing construction and maintenance activities, the holder shall ensure that all construction equipment and vehicles are cleaned of all vegetation (stems, leaves seeds, and all other vegetative parts) **prior to leaving public lands** in areas that are known by the Authorized Officer of the BLM to be infested with noxious weeds.
8. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes and equipment.
9. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way. If the holder finds that it is necessary to work outside the right-of-way, operations will cease and the holder will contact the BLM and request a Temporary Use Permit (TUP) for staging etc. The holder will assure all fencing along the right-of-way, that is disturbed by realignment construction, be replaced immediately, to prevent cattle migration.
10. The holder will protect the resources as they function today by not interrupting the existing function of the sub surface water movement (i.e. springs, seeps) on the old road. Prior to any rehabilitation, holder will contact the Authorized Officer to discuss what portions of the old road will be rehabilitated.
11. No construction or routine maintenance shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of three inches deep, the soil shall be deemed too wet to adequately support construction equipment.
12. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Costal and Geodetic benchmarks and triangulation stations,

military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of surveying instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

13. Ninety days prior to termination of the right-of-way, the holder shall contact the Authorized Officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, re-contouring, top-soiling, or seeding. The Authorized Officer must approve the plan in writing prior to the holder's commencement of any termination activities.
14. The hold shall be liable for damage or injury to the United States to the extent provided by 43 CFR 2803.1-5.

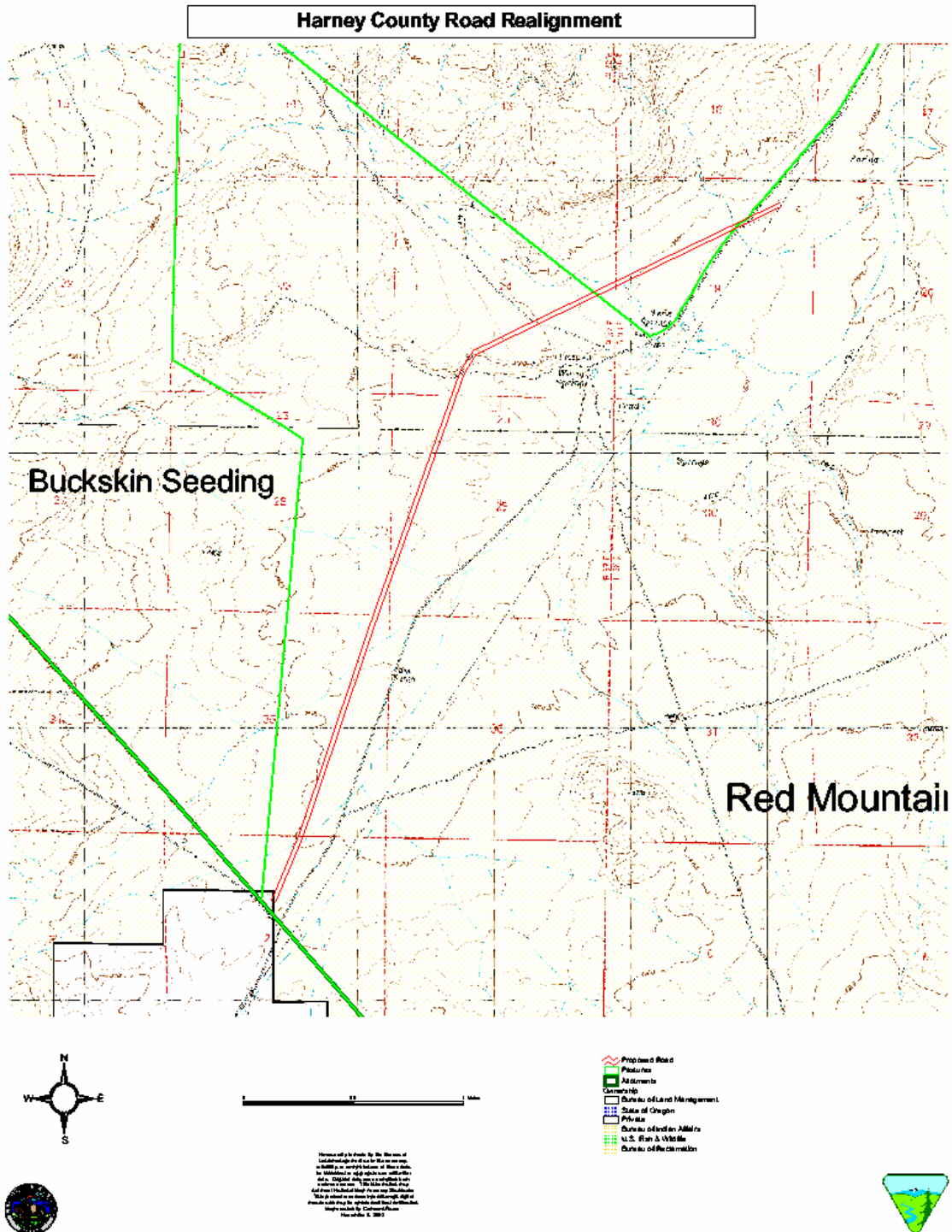


EXHIBIT B

Map shows existing road in black and proposed project road realignment in red. The proposed road realignment is on a portion of the Whitehorse Road located in T.38S.R37E., in sections 24,25,26 & 35. In T.39S., R37E., Section 02, and in T.38S., R.38E., Section 19.